IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 213 OF 2005

Automotive Manufacturers Private Limited, A Company Incorporated Under the Companies Act, 1956 with its Office at 108, Bazar Ward, Kurla, Mumbai – 400 070. ..... Petitioner.

VERSUS

1. M/s. Dynamic Engineers, through its Proprietor Shri Mohandas Bhaskar Bakhale, resident of Dhawali, Ponda – Goa.

2. M/s. Mahindra Nissan Allwyn Ltd., Mahindra House, TSR Complex, 1-7-1, Parle Lane, Secunderabad – 500 003, A.P.

3. M/s. Mahindra And Mahindra Ltd., having its registered office at Gateway Building, Appollo Bunder, Mumbai – 400 039. ..... Respondents

Mr. S. G. Bhobe, Advocate for the petitioner.

Mr. R.G. Ramani, Advocate for respondent No. 1.

CORAM : R.M. LODHA, J.

DATE : 2ND SEPTEMBER, 2005.

ORAL JUDGMENT :

Rule, returnable forthwith.

2. Mr. Ramani waives service for the respondent No.1 (original plaintiff). The learned Counsel for the petitioner and the respondent No.1 agreed that for the purpose of this writ petition, the respondents No.2 and 3 (defendants No.2 and 3) are not necessary parties. Accordingly, service on the respondents No.2 and 3 is dispensed with.

3. The learned Counsel for the petitioner (defendant No.3) submits that the petitioner is prepared to pay reasonable costs to the respondent No.1 (original plaintiff) and that the petitioner's written statement may be permitted to be taken on record and it may be permitted to lead evidence in the light of the defence set up in the written statement. He submits that the petitioner (defendant No.3) shall not ask for reopening of the evidence that has already been recorded by the trial Court.

4. The learned Counsel for the respondent No.1 (original plaintiff) left the matter to the Court.

5. Having considered all the aspects, I am satisfied that the interest of justice shall be sub-served by the following order :

(i) Subject to the petitioner paying cost or Rs.15,000/- to the respondent No.1 (plaintiff) within three weeks from today, the written statement filed by the petitioner (defendant No.3) shall be taken on record. The trial Court, on the basis of the written statement of the petitioner (defendant No.3), if any issue arises for determination, shall frame an additional issue and permit the petitioner (defendant No.3) to lead evidence in support thereof.

(ii) The plaintiff shall be at liberty to lead evidence in rebuttal to the evidence of the defendant No.3.

(iii) The evidence that has been recorded shall not be re-opened.

(iv) In case, the cost of Rs.15,000/- is not paid by the petitioner (defendant No.3) to respondent No.1 (plaintiff) within the aforesaid time, the aforesaid order shall stand recalled.

The impugned order passed by the trial Court stands modified in the aforesaid terms.

R.M. LODHA, J.